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Attorneys for Defendants

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

JOSEPH CIAMPI,

Plaintiff,

v.

CITY OF PALO ALTO, a government
 entity; LYNNE JOHNSON, an individual;
 CHIEF DENNIS BURNS, an individual;
 OFFICER KELLY BURGER, an individual;
 OFFICER MANUEL TEMORES, an
 individual; OFFICER APRIL WAGNER, an
 individual; AGENT DAN RYAN;
 SERGEANT NATASHA POWERS,
 individual,

Defendants.

NO. C09-02655 PVT

**DEFENDANTS' CASE
 MANAGEMENT STATEMENT;
 DECLARATION OF STEVEN
 A. SHERMAN**

**Date: October 27, 2009
 Time: 2:00 p.m.
 Ctrm: 5**

**[REQUEST FOR TELEPHONIC
 APPEARANCE]**

Defendants are filing this Case Management Statement after receiving
 Plaintiff's unilateral filing yesterday in the late afternoon. Counsel's statement that
 she was unable to "get a hold of defense counsel" is a bit disingenuous as is
 explained in the accompanying declaration of Steven A. Sherman.

1. Jurisdiction and Service.

Defendants believe that given the allegations in the Complaint,
 jurisdiction is proper.

1 **2. Facts:**

2 Defendants deny any and all alleged wrongdoing set forth in the improperly
3 filed Plaintiff's Statement of Facts. Defendants acknowledge the lack of a sleeping
4 ordinance and the dismissal of the criminal case although Defendants adamantly
5 disagree with the basis or reasoning behind the dismissal.

6 Officers on scene did engage in a consensual contact with Plaintiff until he
7 became threatening and aggressive. Attempts were then made to control him.
8 Plaintiff actively resisted the officers' actions. Plaintiff unlawfully hit, kicked and
9 struck the officers.

10 Plaintiff was not excessively tasered nor was excessive force used on him. In
11 fact, based on Plaintiff's assaultive and combative behavior, the officers exercised
12 great restraint. Plaintiff was not tased for over 30 seconds. No evidence was altered.
13 No evidence was intentionally destroyed.

14 Plaintiff attacked and injured the officers.

15 **3. Legal Issues:**

16 Defendants acknowledge that Plaintiff's filed complaint alleges what it
17 alleges.

18 **4. Motions:**

19 Defendants anticipate filing a motion for summary judgment or summary
20 adjudication. Should the matter proceed to trial, Defendants anticipate filing a
21 motion to bifurcate/trifurcate.

22 **5. Amendment of Pleadings:**

23 Defendants do not anticipate amending any additional pleadings, however,
24 such will be governed by the filings of Plaintiff. However, based on the injuries to
25 the officers, Defendants are contemplating a cross-complaint.

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1 **6. Evidence Preservation:**

2 Defendants have taken measures to preserve evidence in this action.

3 **7. Disclosures:**

4 Defendants intend to exchange documents known to them with Plaintiff on
5 October 20, 2009, or shortly thereafter as more evidence is being gathered based on a
6 prior agreement between counsel.

7 **8. Discovery:**

8 Defendants anticipate engaging in the following discovery: 1) the deposition
9 of Plaintiff and all witnesses; 2) written discovery to Plaintiff; 3) subpoenaing
10 documents from third parties and depositions related thereto; 4) expert discovery.

11 **9. Class Actions:**

12 This is not a class action.

13 **10. Related Cases:**

14 Defendants are unaware of any related cases or proceedings that are currently
15 pending.

16 **11. Relief:**

17 Defendants will seek dismissal of the case in its entirety. If successful,
18 Defendants will attempt to recoup any and all costs, fees and expenses on behalf of
19 the City and its citizens.

20 **12. Settlement and ADR:**

21 The parties have met and conferred regarding possible ADR process and have
22 agreed to court-referred mediation.

23 The Parties have also briefly discussed settlement. Plaintiff was to get back to
24 Defendant with two different settlement demands. One based on the fact that no
25 evidence has been altered and that Plaintiff is fabricating those allegations and one;
26 assuming Plaintiff is correct and the evidence has been altered. (Something
27 Defendants adamantly deny)

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13. Consent to Magistrate Judge for All Purposes:

Defendants decline to have all further proceedings in this case conducted by a magistrate judge.

14. Other References:

Defendants agree with Plaintiff that the case is not suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multi-district Litigation.

15. Narrowing of Issues:

Defendants do not anticipate the voluntarily narrowing of issues until Plaintiffs are satisfied that no evidence has been altered and that Plaintiff is mistaken in his firm beliefs.

16. Expedited Schedule:

Defendants agree with Plaintiff that the case is not appropriate for handling on an expedited basis with streamlined procedures.

17. Scheduling:

Based on other currently pending matter, Defendants propose the following schedule:

Designation of experts	July 12, 2010
Discovery cutoff	September 13, 2010
Hearing of dispositive motions	November 8, 2010
Pretrial Conference	December 6, 2010
Trial	January 11, 2011

18. Trial:

Defendants have requested a jury trial and agree with Plaintiff's assessment that such will be approximately 10 days, inclusive of jury selection.

19. Disclosure of Non-Party, Interested Entities of Persons:

Defendants are unaware of any non-party, interested entities or persons.

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None of which Defendants are aware.

FERGUSON, PRAET & SHERMAN
A Professional Corporation

/s/ Steven A. Sherman
Steven A. Sherman
Attorneys for Defendants

DECLARATION OF STEVEN A. SHERMAN

I, Steven A. Sherman, declare and state as follows:

1. I am the attorney of record for the Defendants herein.

2. I am a partner with the law offices of Ferguson, Praet & Sherman, and licenced to practice in both the state and federal court systems. If called upon to do so, I could and would testify in conformance with the statements made herein.

3. On the afternoon of October 19, 2009, Plaintiff's counsel left me a voice mail message concerning the completion of the Joint Case Management Statement. I was in court the afternoon of October 19, 2009, and did not receive the message. This was the first and only voice mail message and/or any call from counsel regarding the Case Management Statement.

4. The message on my voice mail states very clearly that if I am unavailable and the matter is of importance that the calling party should press the designated button to reach my secretary. My secretary can get me a message by e-mail instantly. No message was left with my secretary.

5. I take issue with the statement made by Plaintiff's counsel that she tried to reach me, but to no avail. To me, that sounds like I have been unavailable or unwilling to participate in the preparation of a joint document, and that simply is not the case. A call to me the afternoon before the document is due is hardly reflective of me being unavailable. The fact that counsel elected to bypass the option to speak with my secretary only furthers my belief that the statement that I was "unavailable" is not based in any fact whatsoever.

6. As such, I am filing a Statement on behalf of the Defendants so that the court is aware of our position.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I, Cathy Sherman, employed in the aforesaid County, State of California; I am over the age of 18 years and not a party to the within action. My business address is 1631 East 18th Street, Santa Ana, California 92705-7101.

On October 21, 2009, served the **DEFENDANTS' CASE MANAGEMENT STATEMENT** on the interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

Andrew F. Pierce
Stacy North
PIERCE & SHEARER LLP
2483 E. Bayshore Road, Suite 202
Palo Alto, CA 94303
apierce@pierceshearer.com
stacy@pierceshearer.com

____ (By Mail) I placed such envelope for deposit in accordance with office practice, sealed, with postage thereon fully paid and the correspondence to be deposited in the United States mail at Santa Ana, California on the same day.

XXX (By e-filing) The above noted individuals are registered with the Court to receive notice of electronically filed documents. Per ECF rules, hard copies must be served only on parties who are not set up for electronic notification.

____ (By Personal Service) I caused such envelope to be delivered by hand to the office of the addressee.

XXX (Federal) I declare under penalty of perjury that the foregoing is true and correct, and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on October 21, 2009, at Santa Ana, California.

/s/ Cathy Sherman
Cathy Sherman